

EXHIBIT 18-7

1 MR JUSTICE STEEL: I understand it is not on offer.

2 MS BLANCHARD: But if it's not on offer then, My Lord, the right answer would be to
3 make the Order *pro tem*.

4 MR JUSTICE STEEL: Right, I see. yes.

5

6 **[Judgment transcribed separately]**

7

8 MS BLANCHARD: My Lord, perhaps the sense is this: is we can get a transcript of Your
9 Lordship's judgment ...

10 MR JUSTICE STEEL: Yes, okay.

11 MS BLANCHARD: ... and we can pass it to Your Lordship for His corrections.

12 MR JUSTICE STEEL: Well, I would certainly try and tidy up the English, but ...

13 MS BLANCHARD: And if there are any major points ...

14 MR JUSTICE STEEL: ... if there are any major points, would you let me know by letter,
15 and I will try to add to the judgment?

16 MR ROSEN: I can't think of anything offhand.

17 MR JUSTICE STEEL: No, well, that's where it is for the moment.

18 MR ROSEN: My Lord, a very insignificant matter is that Your Lordship described me as
19 saying that the error as regards to the US proceedings was a significant error. I'm
20 not sure that I myself described it as a significant error, although my description of
21 it may have involved some concession.

22 MR JUSTICE STEEL: Well, I will revise that if necessary when I see my judgment.

23 MR ROSEN: We're very grateful to Your Lordship. My Lord, two things arise, first of
24 all, the costs. There aren't schedules, it's been a pretty heavy application, and I'd
25 simply ask for an order that the Claimants bear my costs of this application to
26 include the reserve costs in front of Mr Justice Underhill when the matter was

1 returned before him on short notice and adjourned.

2 MR JUSTICE STEEL: Right, well, let us get the issue in principle sorted out first. Ms
3 Blanchard?

4 MS BLANCHARD: My Lord, I'm going to resist that for two reasons. First of all, we've
5 had a really rather shifting sand sort of case today. We are told that there are
6 serious defects in the US proceedings, we're told there are going to be amendments,
7 Your Lordship's had undertakings, that we're told are going to correct the defects.
8 It's always been at the forefront of our case that it was important the way this matter
9 was put in the US proceedings, and we haven't had evidence on a lot of these
10 matters, and we say we've reasonably prosecuted this case so far, and what Your
11 Lordship ought to do is to reserve the costs to the trial, because we are presently
12 interim, and it remains the case that if my clients wish to pursue their claim, there
13 will be an application out of trial and whatever – however that's going to be put
14 together for declaratory relief and final interim anti-suit injunctions, at which time a
15 different decision may be made. And so we invite Your Lordship to reserve that.

16 MR JUSTICE STEEL: Tell me about the order of Mr Justice Underhill. That
17 encompassed both this application and also the counter application, or was that not
18 [inaudible]?

19 MS BLANCHARD: What happened, My Lord ...

20 MR ROSEN: It was mentioned, My Lord, but not [inaudible]

21 MS BLANCHARD: What happened My Lord – I believe I was there. Is that Mr Justice –
22 because the night before the Defendants said "*We'll give you undertakings for a*
23 *week*", the Defendant – Mr Justice Underhill accepted those undertakings, he gave
24 directions for exchange of evidence, and he directed that any cross application
25 which was not yet then formulated from the Defendants should be served by Friday,
26 which it was, and that it should be heard today if there was time permitting, there

1 being no estimate for it, because it wasn't then formulated and nobody knew exactly
2 what it was going to be. So that was the way the matter was dealt with.

3 MR JUSTICE STEEL: I understand. Okay. I think, Mr Rosen, you are entitled to your
4 clients' [inaudible].

5 MR ROSEN: I'm very grateful. To include those reserved costs?

6 MR JUSTICE STEEL: Sorry?

7 MR ROSEN: To include those reserved costs of the first hearing? We were served short
8 on the 29th, we stated that we'd give an undertaking for a week on the evening of
9 the 30th, the undertaking was acceptable and directions were given for evidence and
10 for the making of any cross applications, and in our respectful submission, they
11 have to follow the event of the application.

12 MS BLANCHARD: My Lord, we asked on the Friday before for undertakings, failing
13 which we'd reply urgently, nothing was forthcoming, we didn't get a reply, we had
14 no option but to issue the application, we did it, it was past seven on the night
15 before that there was a suggestion that there would be undertakings forthcoming,
16 that could have been resolved earlier than that, in which case there wouldn't have
17 been a need to attend before Mr Justice Underhill, and we attended on the last
18 possible date that we could attend before we were at risk of being in breach of the
19 New York Court order. And for those reasons, My Lord, we shouldn't pay the costs
20 of the reserved hearing, because that hearing could have been avoided if the
21 Defendants had been reasonable about it prior to the time when they were.

22 MR ROSEN: We were extremely reasonable. They weren't entitled to any relief. We
23 gave an undertaking on an application which was served short, and we attended
24 before the Judge for the procedural directions that would have been needed in any
25 event. In fact the matter was largely sorted out before -

26 MR JUSTICE STEEL: Well, I am going to make no order for costs to be granted for

1 reserve costs.

2 MR ROSEN: My Lord I'm told, and I've been given the letter that in fact [Elbourne
3 Mitchell] told us that they would not be making an urgent application on the 25th of
4 May until they'd heard from us by noon on the Tuesday. So – and the Tuesday I
5 think was the 29th.

6 MR JUSTICE STEEL: Well, it is [inaudible] I am not going to make any order [inaudible]

7 MR ROSEN: So be it. My Lord, that brings me to the second matter, which is that I
8 formally ask for an inquiry as to damages as to the week during which we've given
9 our undertaking. I don't ask Your Lordship to make any order on that application
10 other than to adjourn it, if in fact we have suffered damage as a result of being
11 restrained over the last week from taking any steps [inaudible]

12 MR JUSTICE STEEL: Well, you have got the undertaking. Oh, I see, you want the ...

13 MR ROSEN: I have to ask Your Lordship – I have to ask Your Lordship for the inquiry
14 now, at the earliest opportunity, because the previous restraint has lapsed, and Your
15 Lordship doesn't have to deal with it, Your Lordship, in my respectful submission,
16 should just adjourn it, and we'll review the position [inaudible]

17 MR JUSTICE STEEL: Well, I am not sure there is anything to adjourn, I have to say. You
18 have got your undertaking, I presume you can give an appropriate – and I very much
19 doubt it is appropriate to call a trial of substantive issues.

20 MR ROSEN: It won't be. It won't be.

21 MR JUSTICE STEEL: I am not sure you need any order from me, but I [inaudible].

22 MR ROSEN: Well, it's the usual practice that when an interim, or an interim interim
23 prohibition lapses or expires, you ask for an inquiry as to damages, it is then
24 adjourned...

25 MR JUSTICE STEEL: Well, it is usual – it is never done in front of me ...

26 MR ROSEN: Well – well ...

1 MS BLANCHARD: My Lord ...

2 MR JUSTICE STEEL: [inaudible]

3 MR ROSEN: Well, I'll find something ...

4 MR JUSTICE STEEL: [inaudible] this would arise in every freezing order, would it not?

5 MR ROSEN: It should arise, when a freezing order is discharged ...

6 MR JUSTICE STEEL: Yes.

7 MR ROSEN: ... even though of course the matter can – may come before the trial, it may
8 turn out the Claimant was completely right on everything ...

9 MR JUSTICE STEEL: Right.

10 MR ROSEN: ... you ask for an inquiry as to damages, and it is adjourned until the trial, or
11 the Court forms a view as to whether it was – whether it should be enforced,
12 whether there is any damage, and so on and so forth, and it is my custom, and
13 maybe I come from a chancellery background in my youth, always when the
14 prohibition lapses you ask.

15 MR JUSTICE STEEL: Well, [inaudible] Ms Blanchard says about that.

16 MS BLANCHARD: My Lord, I'm not aware of any such custom, and I'm not at all sure
17 where this is said to be going, and what inquiry there would be ...

18 MR JUSTICE STEEL: Nor am I really.

19 MS BLANCHARD: ... arising out of a week ...

20 MR JUSTICE STEEL: [inaudible]

21 MR ROSEN: I'll give Your Lordship ...

22 MS BLANCHARD: ... and My Lord ...

23 MR ROSEN: ... an example ...

24 MS BLANCHARD: ... and My Lord ...

25 MR ROSEN: ... I could have asked ...

26 MR JUSTICE STEEL: Just wait, Mr Rosen, please.

1 MR ROSEN: Yes, of course.

2 MS BLANCHARD: ... what that inquiry would be, or indeed as in to what? The matter
3 was dealt with by consent a week ago, my clients gave some undertakings about
4 documents, and the Defendants gave some undertakings about prosecution,
5 procedural orders were made. That's it, My Lord.

6 MR JUSTICE STEEL: Yes, okay, thank you. Right, Mr Rosen, any more?

7 MR ROSEN: I've made the application ...

8 MR JUSTICE STEEL: Yes.

9 MR ROSEN: ... and I'll give Your Lordship an example of some possible damage. We
10 could have asked the new Judge to issue a letter of request, and we wouldn't have
11 had to go through the more difficult procedure of Section 25, which is going to
12 result in a big fight on our cross application. I'm not ...

13 MR JUSTICE STEEL: Why could you not go for a letter of request?

14 MR ROSEN: Because the interim interim order prohibited us from taking any steps in
15 relation to the New York proceedings, and asking for the issue of a letter of request
16 [inaudible]

17 MR JUSTICE STEEL: But I am sorry, why could you not have asked for a letter of request
18 at the time when you made your application for the order that you have done? I do
19 not follow.

20 MR ROSEN: When he made the order of the 18th of May?

21 MR JUSTICE STEEL: Yes.

22 MR ROSEN: Well, at that stage I suppose we could have done.

23 MR JUSTICE STEEL: Right.

24 MR ROSEN: I mean, we could have done, but we didn't. And we've been restrained from
25 doing so ...

26 MR JUSTICE STEEL: [inaudible]

1 MR ROSEN: ... for a week and have had to issue a much more cumbersome application.

2 MR JUSTICE STEEL: No, yes, I am not remotely persuaded ...

3 MR ROSEN: No, of course, I'm not asking Your Lordship to make anything.

4 MR JUSTICE STEEL: No, I am not asking – I am not saying – I am not remotely
5 persuaded that it is necessary to make any order with regard to the undertaking, and
6 I do not do it.

7 MR ROSEN: So be it.

8 MR JUSTICE STEEL: Right.

9 MR ROSEN: My Lord, we have got our cross application, and obviously we want to try
10 and enforce quickly.

11 MR JUSTICE STEEL: Well, let me come back to that. What dates do you want? You
12 want a hearing, obviously?

13 MR ROSEN: Yes, well, I mean, it's regrettable that the timetable hasn't allowed us to get
14 on with it, and it's much too late now, but we'd like to get on as soon as we can.

15 MR JUSTICE STEEL: Yes, I understand that. Well, I will come back to that in a minute.
16 Write [inaudible]

17 MS BLANCHARD: My Lord, I'm going to ask Your Lordship for permission to appeal ...

18 MR JUSTICE STEEL: Yes.

19 MS BLANCHARD: ... I'm not sure if I need to ask Your Lordship anymore, but I'm
20 going to do it anyway. As your point, My Lord, a point of principle ...

21 MR JUSTICE STEEL: Yes.

22 MS BLANCHARD: ... Your Lordship, we say, should certainly on an interim basis have
23 granted us the relief that we sought, in particular in view of the way the case is put
24 against us in the US. Your Lordship's heard my arguments, and I'm not going to
25 recite them again, but we would invite Your Lordship to bear in mind that this is
26 perhaps a novel point, and that there is a point of principle that arises here, that

1 when an action is brought which in form is an employment matter, that this Court
2 ought to let it to proceed. For those reasons, My Lord, I invite Your Lordship to
3 grant me permission to appeal.

4 MR JUSTICE STEEL: Yes, thank you. Now, I am not minded to give permission to
5 appeal, you have had obviously an opportunity [inaudible] justice. [inaudible] I do
6 not believe issues of principle arise until construction [inaudible] Section 5, save on
7 the special and unusual facts in this case. Now – so there is no permission to
8 appeal.

9 Right, what else? There is no – this is the date you want. You want
10 directions?

11 MR ROSEN: Yes.

12 MR JUSTICE STEEL: Now, are you ready? What is the state of play on preparations for
13 your counter application?

14 MR ROSEN: We are ready. I think we're ready.

15 MR JUSTICE STEEL: Well, both sides of the bar and their relevant evidence?

16 MR ROSEN: Well, we were in a position to fight today, no one said they wanted some
17 more evidence.

18 MR JUSTICE STEEL: Yes, okay, no I understand, okay. And how long do you want, half
19 a day?

20 MR ROSEN: Yes.

21 MS BLANCHARD: My Lord, I hesitate to say this, I fear half a day may not be enough. If
22 what we're going to do – Your Lordship hasn't heard it, but where we've got to on
23 the costs application is that my clients would be willing to consent to some
24 reasonable disclosure requests. We're objecting to interrogatories, and for obvious
25 reasons we're objecting to depositions. As I understand the position of the
26 Defendants, they want to press ahead for everything, i.e. every question, every

1 category.

2 MR JUSTICE STEEL: Yes, I am sure that is right.

3 MS BLANCHARD: And if there is a need to argue all of that out, I'm afraid My Lord I
4 fear we could take the whole day.

5 MR JUSTICE STEEL: Right.

6 MS BLANCHARD: But maybe the Defendants can reflect on that, and indeed as to
7 whether they're going to maintain the position that this Court can just make exactly
8 the same order that the New York Court has made ...

9 MR JUSTICE STEEL: Well, [inaudible] advertised [inaudible]

10 MS BLANCHARD: My Lord, yes.

11 MR JUSTICE STEEL: I am sorry, if you would like to go ahead, I do apologise, I should
12 have released you hours ago, I do – I am so sorry. I will leave this with my clerk.
13 Okay? So sorry, would you please go home, [inaudible].

14 MS BLANCHARD: So, My Lord, I fear that we may be a day, and as to listing it, well, the
15 Defendants can try to persuade listing as to the urgency and get the matter on.

16 MR JUSTICE STEEL: Yes, well, I think that I am not going – I cannot speak to the
17 Registry now, [inaudible], inquiries will have to be made with the Registry as to
18 what is possible, and if what is possible is unsatisfactory to either or both sides, you
19 will have to make a written application [inaudible].

20 MR ROSEN: Yes. Well, all I'd like to say to Your Lordship, I know it's very late, and
21 you've been very patient with me, it is extremely urgent, they are resisting giving
22 any answers or any discovery, they want to give some answers ...

23 MR JUSTICE STEEL: Well, quite a lot of time has gone by already.

24 MR ROSEN: It has. If they want to give some answers to the written questions, and give
25 us the discovery, it may save time, if on the other hand they want to ...

26 MR JUSTICE STEEL: Look, let me understand this urgency. I am not actually quite

1 grasping that. Apart from the fact that the depositions are going to take place on
2 Wednesday, leave that point aside ...

3 MR ROSEN: We're not ...

4 MR JUSTICE STEEL: ... Why is it urgent?

5 MR ROSEN: Because ...

6 MR JUSTICE STEEL: I mean, if they had been playing fast and [inaudible] with your
7 employee history, of course, they may well find them exposed to a substantial
8 claim. But what is so urgent about it?

9 MR ROSEN: Well, we need to find out what they've done, who is involved, what further
10 damage to our business may be as a result pending ...

11 MR JUSTICE STEEL: Well, I think that is probably true about every case, I mean, that is
12 the point of the trial.

13 MR ROSEN: Well, when you have – when you have executives at this level who are
14 joining your competitors and are being joined by other senior executives ...

15 MR JUSTICE STEEL: Yes.

16 MR ROSEN: ... you are in trouble, and you have to protect yourself, because you know
17 that your competitors have been assisted, and once they are joined by your key
18 employees, who then resign, or your clients who move, it is too late, your business
19 suffers very, very significant damage. And quite honestly, these three gentlemen's
20 exposure to damages claims is not going to match the possible scale of damage
21 which we have to protect ...

22 MR JUSTICE STEEL: Well, I understand that point, but I think I need persuading ...

23 MR ROSEN: ... that's the urgency.

24 MR JUSTICE STEEL: ... not now, but if there is any written correspondence to me as to –
25 or perhaps a little bit more substance as to the question of why it is urgent.

26 MR ROSEN: Well ...

1 MR JUSTICE STEEL: I mean, I think all cases are urgent in one sense.

2 MR ROSEN: The scale of this is quite ...

3 MR JUSTICE STEEL: And if damage has been sustained, it has been sustained, and
4 [inaudible] hearing, it seems to me to have much bearing on it.

5 MR ROSEN: We'll address Your Lordship on it, when there are – when there are eight
6 employees going, and others have been approached, there is a prospect of more
7 employees and more clients going.

8 MR JUSTICE STEEL: Well, I understand that point too, yes.

9 MR ROSEN: But we'll have to address Your Lordship on that.

10 MR JUSTICE STEEL: We will have to address that.

11 MR ROSEN: Well, we're very grateful to Your Lordship for sitting so late.

12 MR JUSTICE STEEL: Well, thank you very much.

13 MS BLANCHARD: We're grateful to Your Lordship for sitting so late.

14 MR JUSTICE STEEL: Yes.

15 **Court adjourned**

16

17

18